Supreme Court, U.S.
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No. 14-1373

In the
Supreme Court of the United States

STATE OF UTAH,
Petitioner,

vs.

EDWARD JOSEPH STRIEFF, JR.,
Respondent.

On Writ of Certiorari
to the Utah Supreme Court

JOINT APPENDIX

SEAN D. REYES
Utah Attorney General
TYLER R. GREEN*
Utah Solicitor General
LAURA B. DUPAIX
Deputy Solicitor General
THOMAS B. BRUNKER
Criminal Appeals Director
JEFFREY S. GRAY
Search & Seizure Sec. Dir.
350 N. State St., Ste. 230
Salt Lake City, UT 84114-2320
Telephone: (801) 538-9600
Email: tylergreen@utah.gov

Counsel for Petitioner

PATRICK L. ANDERSON
JOAN C. WATT*
Salt Lake Legal Defender Association
424 E. 500 S., Ste. 300
Salt Lake City, UT 84111
Tele: (801) 532-5444
Email: jwatt@sllda.com

STUART BANNER
UCLA Law School
Supreme Court Clinic
405 Hilgard Ave.
Los Angeles, CA 90095

Counsel for Respondent

**Counsel of Record*

Petition for Writ of Certiorari Filed: May 15, 2015; Certiorari Granted: October 1, 2015

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3RD DISTRICT COURT – SALT LAKE COUNTY
STATE OF UTAH

Case No. 071900011
STATE OF UTAH, PLAINTIFF
vs.
STRIEFF, EDWARD JOSEPH JR., DEFENDANT

RECORD INDEX

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01/02/2007	1-3	Information
01/02/2007	4	Warrant of Arrest
06/12/2008	5	Not found in file – Case referred to Judge Christiansen for decision on 224.00 finders
06/17/2008	6	Not found in File-Finders Money in Trust (Court orders this case be on hold until resolution of the case)
10/16/2008	7-8	MINUTES INITIAL APPEARANCE NOTICE
10/16/2008	9-10	Affidavit of Indigency
10/23/2008	11	Appearance of Counsel – Marie Maxwell

10/23/2008	12-17	Formal request for discovery pursuant to rule 16 of the rules of criminal procedure
10/23/2008	18	Notice of bond hearing
10/28/2008	19-20	MINUTES – DRUG ROLL CALL NOTICE
11/18/2008	21-22	MINUTES – RESOLUTION HEARING
11/26/2008	23-24	Supervised Release Agreement
12/04/2008	25-26	MINUTES – INCOURT NOTE
01/09/2009	27	Substitution of Counsel – Robert K. Engar
01/30/2009	28-29	MINUTES – ARRAIGNMENT NOTICE
02/12/2009	30-35	Motion to Suppress – ROBERT K. ENGAR
03/27/2009	36-45	State's Memorandum Opposing Defendant's Motion to Suppress
04/03/2009	46	MINUTES – INCOURT NOTE NOTICE
05/01/2009	47	MINUTES – MOTION TO SUPPRESS NOTICE

05/26/2009	48-58	Defendant's Motion to Reconsider
05/26/2009	59	Not found in file - Sentencing Memorandum
06/19/2009	60	MINUTES – SCHEDULING CONFERENCE NOTICE
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02/12/2010	97	MINUTES – CHANGE OF PLEA NOTICE
02/12/2010	98-105	Statement of Defendant in support of guilty plea and certificate of counsel
02/12/2010	106	Referral to SLCO-PSR
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04/23/2010	109	MINUTES – CHANGE OF PLEA NOTICE
05/27/2010	110	SLCO – Presentence Report
06/04/2010	111-112	MINUTES – SENTENCE, JUDGMENT, COMMITMENT
06/04/2010	113	Probation Referral
07/01/2010	114-115	Notice of Appeal
07/01/2010	116-117	Designation of Record
07/01/2010	118-119	Certificate
07/08/2010	120-121	Utah Court of Appeals – Letter to Mr. Engar – Notice of Appeal has been filed, case number 20100541-CA should be reflected on any future filings

07/09/2010	122-124	Order to Release Property to Edward Joseph Strieff, Jr.
08/11/2010	125	Transcript, Preliminary Hearing, May 1, 2009; Carolyn Erickson, CSR
08/11/2010	126	Transcript, Motion Hearing, September 25, 2009; Carolyn Erickson, CSR
08/11/2010	127	Transcript, Ruling, December 4, 2009; Carolyn Erickson, CSR

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UTAH COURT OF APPEALS

Case No. 20100541-CA

DOCKET ENTRIES

Date	Docket Number	Proceedings
07/07/2010	1	Notice of Appeal Filed
	* * *	
07/22/2010	4	Docketing Statement Filed
07/29/2010	5	Default Letter – Transcript
07/30/2010	6	Transcript Request Received
07/30/2010	7	Ack. of Request for Transcript
08/02/2010	8	Notice of Transcript Filed TC
08/10/2010	9	Called for Record
08/11/2010	10	Set Briefing Schedule
08/11/2010	11	Record Filed
08/13/2010	12	Appearance of Counsel
09/15/2010	13	Misc. Letter
09/15/2010	14	Stipulated Extension of Time for Appellant
10/21/2010	15	Motion for Extension of Time for Appellant

10/25/2010	16	Extension Granted
11/23/2010	17	Motion for Extension of Time for Appellant
11/24/2010	18	Extension Granted
12/23/2010	19	Appellant's Brief Filed
12/28/2010	20	Brief on Disc Filed
01/03/2011	21	Appearance of Counsel
01/03/2011	22	Misc. Letter
01/25/2011	23	Stipulated Extension of Time for Appellee
02/24/2011	24	Motion for Extension of Time for Appellee
02/28/2011	25	Extension Granted
03/28/2011	26	Motion for Extension of Time for Appellee
04/05/2011	27	Extension Granted
04/26/2011	28	4th Ext. Req. – Appellee Brief
05/17/2011	29	Extension Granted
05/27/2011	30	Appellee's Brief Filed
06/01/2011	31	Brief on Disc Filed
06/28/2011	32	Stipulated Extension of Time for Reply Brief
07/28/2011	33	Motion for Extension of Time for Reply Brief
08/16/2011	34	Extension Granted

08/29/2011	35	Appellant's Reply Brief Filed
08/30/2011	36	Brief on Disc filed
11/22/2011	37	Calendared
01/26/2012	38	Appellant's Supp Authority to Brf
01/31/2012	39	Submitted on oral argument
08/30/2012	40	Opinion Filed
09/24/2012	41	Notice – Extension for Writ of Cert filed
09/26/2012	42	Courtesy Copy
10/16/2012	43	Notice – Petition for Writ of Certiorari filed
01/14/2013	44	Notice – Cert Granted in SC
01/16/2013	45	Remittitur/Transfer
01/16/2013	46	Record Sent to Sup. Ct.

UTAH SUPREME COURT

Case No. 20120854-SC

DOCKET ENTRIES

Date	Docket Number	Proceedings
09/24/2012	1	Motion for Extension of Time for Writ of Cert
09/26/2012	2	Extension Granted
10/11/2012	3	Receipt for Payment
10/11/2012	4	Writ of Certiorari Filed
10/11/2012	5	Appearance of Counsel
11/13/2012	6	Response to Writ Filed
11/15/2012	7	Circulated
01/14/2013	8	Writ of Certiorari Granted
01/15/2013	9	Called for Record – Certiorari
01/16/2013	10	Transfer of Record from COA
01/16/2013	11	Record Filed
01/16/2013	12	Set Briefing Schedule
01/17/2013	13	Misc. Letter
02/28/2013	14	Appellant's Brief Filed
02/28/2013	15	Brief of Disc filed

04/02/2013	16	Motion for Extension of Time for Appellee
04/03/2013	17	Certificate of Service
04/04/2013	18	Extension Granted
04/16/2013	19	Stipulated Extension of Time for Appellee
04/16/2013	20	Misc. Letter
04/26/2013	21	Motion for Extension of Time for Appellee
04/29/2013	22	Extension Granted
04/29/2013	23	Appellee's Brief Filed
04/29/2013	24	Brief on Disc filed
05/03/2013	25	Misc. Letter
05/08/2013	26	Misc. Letter
05/29/2013	27	Stipulated Extension of Time for Reply Brief
06/03/2013	28	Calendared
06/28/2013	29	Appellant's Reply Brief Filed
06/28/2013	30	Brief on Disc filed
09/03/2013	31	Submitted on Oral Argument
09/05/2013	32	Appellee's Supp Authority to Brf
01/16/2015	33	Opinion Filed
01/28/2015	34	Motion to Stay Remittitur

01/30/2015	35	Remittitur Stayed
04/13/2015	36	Notice
05/19/2015	37	Courtesy Copy of US Cert Petition
05/22/2015	38	Notice – US Cert Petition Filed 5/15/15
10/06/2015	39	Notice – US Cert Granted 10/01/15

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IN THE THIRD JUDICIAL DISTRICT COURT,
SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	Case No. 071900011 FS
	:	
Plaintiff,	:	Appellate Court Case
	:	No. 20100541
vs.	:	
	:	
EDWARD JOSEPH	:	
STRIEFF, JR.,	:	
	:	
Defendant.	:	

PRELIMINARY HEARING MAY 1, 2009

BEFORE

JUDGE MICHELE CHRISTIANSEN

CAROLYN ERICKSON, CSR
CERTIFIED COURT TRANSCRIBER
1775 East Ellen Way
Sandy, Utah 84092
801-523-1186

APPEARANCES

For the Plaintiff:	MATTHEW D. BATES Assistant District Attorney
For the Defendant:	ROBERT K. ENGAR Attorney at Law

* * *

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SALT LAKE CITY, UTAH; MAY 1, 2010
JUDGE MICHELE CHRISTIANSEN
(Transcriber's note: speaker identification may not be accurate with audio recordings.)

PROCEEDINGS

MR. BATES: Your Honor, we're ready to go on the Strieff matter.

MR. ENGAR: Your Honor, Bob Engar for the defendant.

MR. BATES: Matthew Bates for the state.

MR. ENGAR: Elizabeth Lorenzo is assisting me also, Your Honor.

THE COURT: – to take evidence.

MR. BATES: Yes, Your Honor. We'll call Doug Fackrell to the stand.

DOUG FACKRELL

having been first duly sworn, testified upon his oath as follows:

DIRECT EXAMINATION

BY MR. BATES:

Q Will you state your name for the record and spell your last name?

A Fackrell and it's F-A-C-K-R-E-L-L.

Q Mr. Fackrell, what was your occupation on December 21st of 2006?

[2] A Narcotics detective.

Q For what agency?

A For South Salt Lake Police.

Q How long had you been a narcotics detective on that date?

A Couple of years.

Q And how long as a police officer?

A On that date, 18 years.

Q Will you just describe briefly what kind of experience and training you've had in the detection and investigation of narcotic related offenses?

A Of course I've had basic training at the police academy, ongoing training as part of our department training. I've been to several specialized classes including Utah Narcotics Officers Association trainings and conference.

Q And what were your duties as a narcotics officer or as a narcotics detective?

A We basically focused on the street level of narcotics, so ...

Q Now on the 21st of December of 2006, you were watching a house at about 430 East and 2700 South?

A Yes.

Q Okay. Why were you watching that house?

A I'd received information on our drug tip line. An anonymous caller left a message on there saying that they **[3]** believed there was narcotics activity at the house and they described some short stay traffic at the house.

Q Did the caller state, give the address of the house or the description? How did you know this was the house the caller was referring to –

A They gave the address of the house and then I verified that by just driving by and making sure that that was the house that I was going to look at.

Q How long did you watch this house for?

A Off and on for a week or so.

Q Can you give an estimate as to maybe how many minutes or hours you spent sitting and watching the house, in total for that week?

A In total? Let's see, I would estimate maybe three hours.

Q Now, can you tell us when during the day generally you'd be watching the house?

A Most of the time in the evening, but I vary my shift, I would vary my shift sometimes in the mornings and sometimes in the evenings, so different times during the day.

Q Now did you notice the short term traffic that the anonymous caller had described?

A I did see short term traffic, yes.

Q Okay. How frequent was the short term traffic?

A Ummm, not terribly frequent but frequent enough that it raised my suspicion.

Q What was it about the frequency **[4]** that raised your suspicions? Was it more than you see at a regular house or less?

A It was more than I'd see at a regular house and it was just the duration of time that people would come, stay and then leave.

Q How long was that time on average?

A Just a couple of minutes.

Q Was that pretty consistent with everybody you saw visiting the house?

A Yes.

Q Now, on the 21st of December 2006 you stopped somebody leaving the house; is that correct?

A Yes.

Q Do you see that person in the courtroom?

A I do.

Q Will you point him out and describe what he's wearing?

A Yeah he's wearing a leather jacket, glasses, and a grey beard.

Q Why did you stop him?

A He was coming out of the house that I had been watching and I decided that I'd like to ask somebody if I could find out what was going on the house.

[5] Q How were you dressed when you spoke to him?

A Plain clothes.

Q Did you have a badge on? Was it readily identifiable that you were a police officer?

A Not right away, no, because I was driving an unmarked car, I was plain clothes but I was wearing a badge under my shirt and I was wearing this too, same thing.

Q Would you describe for the Court, just in brief, how the stop occurred; what you said to him; and what he said to youl; how you approached him?

A Sure. He came out of the house and he was walking eastbound on 27th and I approached him in the parking lot of the 7-Eleven on the corner of 27th and Adams which is about a block away from the house. I stopped him, told him who I was, told him that I had been watching the house and that I believed there might be drug activity there and asked him if he would tell me what he was doing there.

Q Okay. At some point did you request his identification?

A I did.

Q At what point during this conversation did you ask for his identification?

A You know, I don't know the exact point but it was, you know, of course it's normal for me to want to know who I'm talking to so I told him that, you know, if he had some **[6]** ID if I could please see it because I would like to know who I'm talking to, yes.

Q And when he produced this identification did you take it from him?

A Yes.

Q And what did you do with it?

A I had dispatch run a warrants check, normal warrants check.

Q And what did you find when you ran the warrants check[?]

A He had a warrant, small traffic warrant out of South Salt Lake Justice Court.

Q Did you arrest him on that warrant?

A I did.

Q What did you find when you arrested him?

A After arresting him I did the normal search on him – and can I refer to my notes so I can tell you exactly what it was –

Q Sure.

A – please. Okay, in his right front pocket –

MR. ENGAR: Your Honor if you could direct the witness to testify from memory and not just simply read his report?

MR BATES: I believe he's indicated that he can't remember exactly what he found and the report is a [7] contemporaneously written statement. I think it would be okay for him to refer to the report. He's not going to remember exactly where he found everything.

THE COURT: Do you need your report to refresh your recollection, sir?

THE WITNESS: It would help, yes.

THE COURT: – read from your report.

THE WITNESS: Okay. In his right front pocket there was a small green plastic scale and that scale I recognized as being commonly used in drug transactions to weigh small amounts of drugs. On the scale there was a white powder residue. In his left pant pocket I found a clear baggy with a white crystal substance inside. That substance field tested positive

for methamphetamine. In his coat pocket there was a black, a small black case. Inside that case there was a drug pipe and a small blue plastic baggy that also had a white crystal substance inside. That substance also tested positive for methamphetamine.

Q (BY MR. BATES) Now, did you see the defendant enter the house?

A I did not see him enter the house.

Q Okay. Had you seen the defendant at that house before when you'd been watching it? Had you seen him frequent that house?

A No.

[8] MR. BATES: Okay. That's all I have, your Honor.

CROSS EXAMINATION

BY MR. ENGAR:

Q: Officer, (inaudible) just asked you when you stopped Mr. Strieff at the 7-Eleven, was that the first time you had seen him?

A Yes.

Q So you have no idea how long he had been at the house?

A No.

Q And you have no idea if he lived at the house?

A No.

Q And you had no reason to stop him other than that he had left that house, correct?

A He was leaving the house the same as other people had done that I'd been watching.

Q Was there anything else that gave you suspicion that he was committing a crime other than him leaving the house?

A No.

Q Now this happened about, almost two and a half years ago, correct?

A Yes.

Q And you prepared a report shortly after this happened; is that also correct?

[9]A Yes.

Q And it's fair to say that this report is the basis for your recollection, is it not?

A Yes.

Q Your testimony about the anonymous caller saying there was short-stay traffic is not your report, is it?

A No.

Q Nor is it in your report that you'd been watching the house for a week?

A No.

Q Nor is it in your report that you'd been watching the house for three hours, correct?

A No.

Q Yet almost two and a half years later you're remembering these things?

A Yes.

Q You said you'd been 18 years on the police force before this happened; is that correct?

A Yes.

Q How many arrests did you make during those 18 years?

A I have no idea.

Q Hundreds?

A Probably.

Q Thousands maybe?

[10] A Uh-huh (affirmative).

Q How many years were you a police officer after this arrest?

A For two more years.

Q When you stopped Mr. Strieff you were in an unmarked vehicle?

A Yes.

Q How did you stop him?

A I just pulled up next to him and then got out of the truck and approached him.

Q Were the lights activated on the truck?

A No.

Q But you identified yourself as a police officer?

A Yes.

MR. ENGAR: If I could just have a moment, Your Honor.

Q (BY MR. ENGAR) You said that the short-stay traffic at the house you observed was not frequent; isn't that correct?

A I don't believe that's what I said.

Q What did you observe about the short-stay traffic at the house?

A People would come stay only for a couple of minutes and then leave.

Q How many people?

[11] A In that week, I'm not sure. I didn't make any notes.

Q When you asked Mr. Strieff what he was doing at the house what did he tell you?

A I don't recall what he told me.

MR. ENGAR: I don't any more questions, Your Honor.

MR. BATES: A couple of followup, Your Honor.

REDIRECT EXAMINATION

BY MR. BATES:

Q Do you recall what kind of identification the defendant gave you?

A Utah identification card.

Q Did that probably have an address on it?

A I don't know for sure. It does but I don't know what the address is.

MR. BATES: That's all.

MR. ENGAR: I don't have any further questions, Your Honor.

THE COURT: Thank you, Detective Fackrell. Is that all the evidence you have?

MR. BATES: That's all the evidence I have.

MR. ENGAR: Defense doesn't have any evidence to present, Your Honor.

THE COURT: I note in your brief, Mr. Bates, that you wanted the opportunity to brief the issue of

reasonable [12] suspicion or do you want to just make–

MR. BATES: In my brief I did mention that I'd like to reserve that opportunity. After hearing the testimony, I think I'm ready to concede that this doesn't quite meet the level of reasonable suspicion under Terry v. Ohio. I think it's extremely close but I don't think further briefing is going to really get us anywhere. So it seems to me the issue at this point is going to rest on attenuation.

THE COURT: I would agree.

MR. ENGAR: Well, Your Honor, I would first argue first of all under Utah Code 77-7-15 that an officer may stop any person when he has reasonable suspicion to believe the person has committed an offense and may demand his name, address, and explanation of his activities. There's no reasonable suspicion, there's no reason to stop Mr. Strieff and ask his name and if you can't get his name you can't get the warrant and, you know, I don't think attenuation is the issue. I think it's simply reasonable suspicion to make a stop and I think Mr. Bates just said that there wasn't, it didn't rise to that level and if there's no reasonable suspicion, he can't stop Mr. Strieff.

I think it's clear he was stopped. The officer stopped him, asked him some questions, took his ID and did a warrants check. So I think it's clearly a stop that would require reasonable suspicion. It didn't exist here and in [13] fact, Your Honor, the

court said, leaving a house suspected of drug activity which is a case I referenced in my motion in Sykes, that's not enough. The Court said any connection between the defendant and the illegal activity was purely speculation and that's what it would be here also. There's no evidence that there had been any other stops of people with drugs coming from this house, only an anonymous caller which that's presumptive unreliable, Your Honor, the person doesn't even give their name. There's just not anything here. I don't even think attenuation is an issue.

THE COURT: Well, it's not necessarily that it's attenuation but it's the – I think as you articulated, Mr. Bates, it's the 'but for' test.

MR. BATES: That's correct, Your Honor. The U.S. Supreme Court in Won Sung said that they were not articulating a 'but for' test and pretty much every court, to look at this issue since Won Sung, including the Supreme Court in Brown and the numerous Federal and State Courts have rejected the idea that it's simply a 'but for' test. If it were a 'but for' test, obviously we'd have a problem here, but it's not.

I think to quote the Supreme Court of Washington back in '68, even long before Won Sung or about the same time as Won Sung, I think, it's indescribably silly to say that you can't arrest somebody on a valid warrant that you **[14]** discover during a stop just because the initial stop was unlawful. Once we discover the warrant, the officer really almost has no

choice but to follow the judge's order in that warrant, arrest the person and what the courts have held is that's a valid arrest and that the suppression is not an appropriate remedy where we're done a search incident to arrest during a valid arrest and this is a doctrine that though relatively new within the last 10 years has gained wide acceptance throughout, almost every jurisdiction in the country that's confronted the issue.

The only real question in this case is was it a flagrant violation and what the courts have held in, I think U.S. v. Green is sort of a leading case. It's a Seventh Circuit case that everybody looks to, is that as long as it's not a flagrant violation of the Fourth Amendment that a warrant attenuates the search incident to arrest from the illegal stop and this does not seem like the kind of case where it's a flagrant violation. Detective Fackrell stopped this individual under a good faith belief that he had reasonable suspicion to stop him. He'd been watching the house. He'd been corroborating the anonymous tips and he made what I think is probably an innocent or mistake in calculation of the quantum of suspicion needed to stop the defendant.

It's not the type of case – and if you look at the [15] case law on flagrancy of these violations, usually what they're looking at are things like these dragnet searches where, for example, cops go through Pioneer Park and round up everybody there and just search them and check their ID. This isn't that kind

of stop. It's something where the officer thought he was doing the right thing in complying with the law and just, you know, made the mistake and wasn't actually complying. So I don't believe it's flagrant and it shouldn't be, the evidence shouldn't be suppressed in this case.

MR. ENGAR: Your Honor, you still have to look whether the evidence was obtained through an exploitation of an illegality and it clearly was. There wasn't reasonable suspicion to stop Mr. Strieff. He didn't volunteer his name and ID, he didn't give that voluntarily. He gave it because he was stopped by an officer who said I want to know your name. Show me some identification. Without that, Officer Fackrell doesn't even know who this is and if he doesn't know who this guy is, he doesn't get to run a warrants check. If he doesn't get to run a warrants check, he doesn't make an arrest. I don't see how the State can argue that, Well, yeah, he stopped him for a bad reason and the officer's good faith is irrelevant, Your Honor, it's whether he has reasonable suspicion and in this case, again, he just didn't. What he observed falls far short of the other cases [16] referenced in my memo and even in the State's memo that references the Fredrickson case where they'd been watching the house for a year; they'd made arrests. In this case we don't have that and without that, even though the State's officer was able to discover a warrant, that doesn't remedy the fact that the reason

they discovered this warrant is a few seconds ago they illegally got his name and his ID.

MR. BATES: May I respond, Your Honor –

THE COURT: Sure.

MR. BATES: – briefly. I think counsel is still arguing a 'but for' causation. We didn't know he had a warrant and had he not had a warrant, he would have been questioned and allowed to go. The warrant is what caused the search and the subsequent finding of the drugs, not the stop, not the ID or any of that. That's all 'but for'. It's the discovery of the warrant and that's why these courts around the country have been so unanimous in holding that the discovery of the warrant is a very strong reason to attenuate a search from a stop.

THE COURT: Did you want to respond to that?

MR. ENGAR: The search was still directly related to the stop, Your Honor. I mean, the – I don't think just because he found a reason to search him that it was valid, justifies the fact that he was stopped and questioned. I mean, I would move to suppress him making the statement of [17] his name and if there's no statement of his name, the State can't present evidence that they found a warrant. I mean, the fact that they were so close together, I think it is flagrant that the officer's infringing on this man's rights to be free from unreasonable searches and seizures when the officer stops him and says, Give me your name, without a reason. He can't do that. He can say hi and talk to him on the street

but to stop him and demand his name and identification and hold onto that, is not justified.

THE COURT: I understand, Mr. Engar, from your point of view, it is an unreasonable stop, it's an unreasonable search, if you will, given the information that Detective Fackrell had at the time he stopped Mr. Strieff but Mr. Bates' argument is supported in the case law and it's also reasonable in and of itself. There's that quote from the Green case that says, "It would be startling to suggest that because the police illegally stopped an automobile, they cannot arrest an occupant who is found to wanted on a warrant, in a sense requiring and official call of ally, ally ox in free." That's exactly what we have in this case and that is while the information that Detective Fackrell had, as conceded by the State, didn't necessarily rise to a reasonable suspicion that Mr. Strieff was engaging in illegal behavior. The fact of the matter is, he had an outstanding warrant when Detective Fackrell stopped him that evening or [18] that day, I'm not sure – that evening and to suppress the information that was legally obtained pursuit to the arrest of Mr. Strieff I think flies in the face of our jurist prudence and I do believe that the warrant, the discovery of the warrant intervened to dissipate the taint of the illegal stop and I'm going to deny the Motion to Suppress.

I don't know if you want to set this for a scheduling conference, if you want to set this for – what do you want to set this for?

MR. BATES: Scheduling conference would be fine, Your Honor. The State can prepare findings and conclusions.

THE COURT: We'll order that the State do that and do you want to come – I'll give you the option of June 5, June 12 and June 19.

MR. ENGAR: Let's just it on the 19th, Your Honor.

THE COURT: Let's do. We'll set this for a scheduling conference on June 19.

(Whereupon the hearing was concluded)

CERTIFICATE

I HEREBY CERTIFY that the foregoing transcript in the before mentioned proceeding held Judge Michele Christiansen was transcribed by me from an audio recording and is a full, true and correct transcription of the requested proceedings as set forth in the preceding pages to the best of my ability.

Signed August 2nd, 2010 in Sandy, Utah.

/s/

Carolyn Erickson
Certified Shorthand Reporter
Certified Court Transcriber